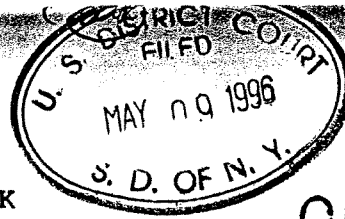


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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

ORIGINAL

3 UNITED STATES OF AMERICA,

4 v.

(S4) 94 Cr. 981(KTD)

(S2) 95 Cr. 167(KTD)

5 HARVEY WEINIG,

6 Defendant.

7 -----x

March 22, 1996  
9:45 a.m.

9 Before:

10 HON. KEVIN T. DUFFY,

11 District Judge

12 APPEARANCES

13 MARY JO WHITE  
14 United States Attorney for the  
Southern District of New York  
15 LEV DASSIN  
16 MARK GOODMAN  
Assistant United States Attorney

17 JOHN WING  
Attorney for Defendant

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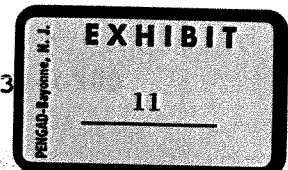
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SOUTHERN DISTRICT REPORTERS (212) 63



1 UNITED STATES DISTRICT COURT  
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17 JOHN WING

Attorney for Defendant

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1 (Case called)

2 THE COURT: Has the government received the  
3 presentence report?

4 MR. GOODMAN: Mark Goodman for the government.  
5 Your Honor, we have.

6 THE COURT: Any objections to it?

7 MR. GOODMAN: No, your Honor.

8 THE COURT: Has the defense received the  
9 presentence report?

10 MR. WING: Yes, your Honor.

11 THE COURT: Have you reviewed it with your  
12 client?

13 MR. WING: Yes, your Honor.

14 THE COURT: Do you have any objections, now, to  
15 the final presentence report?

16 MR. WING: No, your Honor.

17 THE COURT: Does the government have anything to  
18 say in connection with sentence?

19 MR. GOODMAN: No, your Honor. We rest on our  
20 submissions to the Court.

21 THE COURT: Mr. Weinig?

22 MR. WING: Wing.

23 Your Honor, when my kids were young, I was  
24 familiar with that Sesame Street character Big Bird and a  
25 song he used to sing about how everybody makes mistakes, big

1 people, small people, as a matter of fact, law people. It's  
2 probably a different version of the doctrine of original  
3 sin, but Harvey Weinig made some business mistakes and he is  
4 here today facing the most important judicial decision in  
5 his life.

6 I have been in this business for about 30 years,  
7 eleven as a prosecutor and the rest as a defense lawyer, and  
8 I can honestly say I have never run into a case for a  
9 defendant like Mr. Weinig. I have prosecuted and defended  
10 all kinds of people, and I have never known a man who has  
11 spent so much of his life extending himself in a very  
12 selfless, altruistic way to help other people. Young kids,  
13 aging seniors, everyone in between, giving time, giving  
14 legal advice, giving money, and giving, in the best sense  
15 and without calculation about what it might get him down the  
16 road.

17 I have learned that over the last year and a  
18 half, and I have often wished that there was some way that  
19 you as the judge in this case could know Harvey Weinig the  
20 way I know him, or the way I have come to know him, because  
21 I don't think I am capable of adequately describing what  
22 sort of person this man is. I have taken a stab at it.  
23 Other people have written me letters on his behalf, but you  
24 can't really encompass a man's life, and that's what we are  
25 talking about, in letters, in a few words, even in a lot of

1 words.

2 When Truman died, Mary McCrory described him as a  
3 certifiable member of the human race, direct, fallible and  
4 uncommonly wise. And I think Harvey Weinig has exhibited  
5 substantial wisdom in many ways, in the way he has raised  
6 his sons, in the way he has looked after his mother and his  
7 sister, in the way he has counseled countless friends in  
8 difficult situations and taken in young people and tried to  
9 help them get through that hard part of life, and in the way  
10 he has, as Paul Chernis described it, exhibited a  
11 willingness to put his principal assets on the line for a  
12 friend, something which few people would do.

13 But we are here because, however decent and  
14 honorable and good a man and good a life he has led, Harvey  
15 was not uncommonly wise but uncommonly stupid and uncommonly  
16 wrong to become involved in the conduct to which he has pled  
17 guilty.

18 He has acknowledged his wrongdoing, his avarice,  
19 his greed, his stupidity by entering pleas and by trying to  
20 make amends to the extent that he could in terms of offering  
21 help to the government.

22 I don't believe he shirks his responsibility for  
23 his wrongdoing. I explained the context of how he came to  
24 be involved in this money laundering activity. He was not  
25 Peter Thomes, the German client of Hirsch's, who really was

1     running this business. He did not sit down and make a  
2     conscious, knowing decision to initiate and enter into a  
3     business of laundering drug proceeds. Instead, what  
4     happened was, he was given a story by his law partner, a man  
5     he liked, respected, trusted, someone he thought was smart,  
6     and he was told that Robert Hirsch had a client, a long-time  
7     client, for whom he had done previous work, who was in the  
8     gray market or parallel market business in a big way. He  
9     was told that this business generated a lot of cash, and he  
10    was told that Hirsch had actually handled the prior  
11    forfeiture problem for the client before he had become  
12    Harvey's partner, and that, in that proceeding, Hirsch had  
13    been successful and the government had not established that  
14    the money was drug money and Hirsch got the money back, at  
15    least that's what he said.

16                So Mr. Weinig and Mr. Spence, Mr. Richard Spence,  
17    became involved in what I will call the money movement or  
18    money laundering business. And, not that Harvey isn't a  
19    smart person, a sophisticated person, or for that matter  
20    Spence wasn't either, but he was told, and he accepted at  
21    least for a while the notion that this was a gray market,  
22    parallel market business. This was not a drug business.  
23    And I think it is significant that Spence himself,  
24    testifying as a government witness after months of working  
25    with the government prosecutors and agents said that he too,

1 at least up until the summer of '94, thought that this was  
2 gray market and not drug money.

3 Hirsch actually can be heard on a tape on  
4 September 20 at 6 p.m. talking to Mr. Thomes himself,  
5 complaining about the fact that he had been misled by  
6 Thomes, that he has these Colombians after him. And Thomes,  
7 at that stage of the game, was telling Hirsch, at least as  
8 it appears on the government tape the government gave us,  
9 don't be ridiculous. This isn't drug money.

10 So all of the very many facts and details and  
11 circumstances of this case, it would take, as the government  
12 probably knows better than I do, that context, I think, is  
13 fair, Judge, and I think that's what happened. He never  
14 came upon and I don't think Harvey can pinpoint it with any  
15 precision, that he did figure out that it wasn't what he was  
16 being told.

17 Spence got a little hint, because Spence had a  
18 friend who was a cop who was helping, who tipped him off to  
19 the facts that the feds were investigating him for money  
20 laundering. But as in other instances, this is not  
21 something that Spence shared with Harvey Weinig. So he  
22 didn't have the benefit of that information. But sometime  
23 probably in the summer, he figured it out. And then in  
24 September, when Hirsch went to work for the government and  
25 started wearing a wire, Hirsch told him and Hirsch told him

1 all about Colombians and death threats, how they wanted to  
2 be able to pay back the Colombians for money that had  
3 previously been wrongfully withheld.

4 Harvey stayed in. Harvey made money. He liked  
5 having the money. He liked having the security. That was  
6 wrong. And he has told you it's wrong. And he doesn't back  
7 away from that, your Honor.

8 The other case, although not nearly as  
9 complicated, is also somewhat bizarre. Spence, who Harvey  
10 had served as a lawyer on other occasions, commercial  
11 matters, Spence had for once actually been duped himself,  
12 cheated himself, and some fellow named Clooney, in effect,  
13 stole \$237,000 from him by fraud, and Spence wanted to get  
14 it back, and pursued getting it back in various ways. One  
15 of the ways was that he went to Harvey -- I think on one of  
16 the tapes he is saying he went to Harvey because Harvey  
17 didn't charge him. But he went to Harvey and he asked  
18 whether he could do something legally, and Harvey considered  
19 and discussed the possibility of a civil lawsuit. Harvey  
20 communicated with the lawyer for Clooney about the money and  
21 why wasn't it held in escrow, and they even talked about the  
22 possibility of referring the matter to a local prosecutor, I  
23 think in Suffolk County.

24 But nothing happened quickly, and, while Harvey  
25 was away for a few days in London, Spence talks to Salerno



1 about initiating this kidnapping of Clooney or to force the  
2 guy who basically had been diddling and telling him one  
3 story after another, your classic conman, not really coming  
4 up with the goods. And Spence goes in and talks about  
5 kidnapping the fellow. That is on Friday the 11th. On  
6 Saturday the 12th, they do it. They hold him for a couple  
7 of days. And Harvey was apparently told about this Tuesday  
8 the 15th, because he reports it to Hirsch in a taped  
9 conversation. And he says that Spence has told him that he  
10 has had somebody go seize this guy.

11 According to Harvey, at least according to the  
12 transcript of the tape as we understand it, something that  
13 he is told happened that day, and the next morning, Spence  
14 calls Weinig, at a point earlier in the morning, this is the  
15 16th, to report that he's worried because Salerno may have  
16 been arrested and he may have been arrested in connection  
17 with the kidnapping of Clooney. And as Weinig then reports  
18 to Hirsch in another taped conversation, he describes it, I  
19 think, as "it's falling apart."

20 Spence apparently, at least at that time, doesn't  
21 know where Clooney is. Apparently Clooney has been released  
22 in some way. But at some point later that day, Weinig is  
23 told that Clooney and his girlfriend will be coming in to  
24 sign papers turning over a security interest in certain  
25 property to Spence, pursuant, as I understand it, to an

1 arrangement that Clooney promised to do more than a week  
2 earlier but hadn't gotten around to doing. And Mr. Weinig  
3 basically let it happen. He didn't stop it. He didn't sit  
4 down with Clooney and say, "Are we doing this voluntarily?  
5 Are you under any kind of coercion or threat or anything?"  
6 He let it happen, knowing what he knew, which wasn't  
7 everything, Judge. It wasn't everything. He didn't know  
8 details. He could tell that Clooney obviously hadn't been  
9 hurt, and Clooney was really operating on his own, in an  
10 office in midtown Manhattan on his own. But when he knew  
11 that something had probably encouraged or persuaded  
12 Mr. Clooney to do this, he let it happen.

13 That was wrong. That can't be taken back. And  
14 he has really, for his conduct in these two events, already,  
15 before he does a day in jail, paid a remarkable price. He  
16 has lost his livelihood, his right to be a lawyer, and I  
17 think that means more to some people than to others. To  
18 Harvey Weinig it probably means more than it means to most  
19 of us.

20 And other than this conduct, I think Harvey  
21 Weinig probably honored the profession more than most of us.  
22 Speaking for myself, I have to say he certainly did more as  
23 a lawyer for people on a pro bono basis than I ever did or  
24 thought of doing. And he did it continually, throughout  
25 twenty years of practice, not in a big time way, not getting

1 the rewards of legal aid dealers or anything like that, but  
2 helping the gas station attendant, or the housekeeper, or  
3 the brother-in-law of his friend gratis, helping people,  
4 actually counseling people, in a wonderfully wise way in  
5 many situations as to how to do the right thing, even if it  
6 isn't necessarily exercising the fullest extent of  
7 somebody's legal rights.

8 It went on through his practice. The man who  
9 came in from Harvey's prior firm, Berger, Steingutt, having  
10 had his former firm break up and having just lost his major  
11 client and being in desperate straits, and Harvey kind of  
12 befriended him and looked out for him and took care of him.  
13 The general counsel of Philip Morris, who was suddenly,  
14 without warning, dumped from his job because of political  
15 mechanizations within that company and having practiced for  
16 20 years in New York, no one else helps him, Harvey Weinig  
17 gives him a place to sit, gets his secretary to help him  
18 out, get his practice going.

19 I think he has been an uncommon lawyer and an  
20 uncommon human being, and he is probably proudest of the way  
21 in which he has been a father. He has certainly devoted an  
22 incredible amount of time and effort to helping his sons  
23 grow, to giving them lessons about how to live life. He  
24 certainly had never anticipated giving them the lesson that  
25 he has had to give them in the last year and a half, that

1     their own father could go so far astray in doing wrong. But  
2     he has in many respects been a phenomenal father, and,  
3     again, just speaking personally, it makes me regret that I  
4     did not live a life the way he lived it. I spent much too  
5     much time in practicing law, working my cases.

6             Probably the hardest thing of all for Harvey as a  
7     person, at least as I have come to know him, is that he has  
8     had to hand this to his family, at this stage in his life  
9     and their lives. And that has produced really inconsolable  
10    anxiety and anguish and there's nothing he can do.

11            All I can ask, Judge, is that, in imposing  
12    sentence, you extend as much mercy and leniency as you think  
13    is appropriate to someone who has engaged in this conduct,  
14    taking into account the big picture, the way in which he has  
15    lived his life.

16            Thank you.

17            THE COURT: Mr. Weinig, do you have anything to  
18    say?

19            THE WITNESS: Yes, your Honor. Your Honor, today  
20    marks yet another milestone in the nightmare from which I am  
21    unable to awake. It is indeed the darkest day of my life.  
22    I stand before this Court, humiliated, shamed, mortified.

23            Since I was aware that words might not come  
24    easily today, I asked that the Court accept the letter that  
25    I sent you this week --

1 THE COURT: I read it.

2 THE WITNESS: -- in an attempt to understand my  
3 conduct. I apologize to this Court, to the Bar that has  
4 given me succor for so many years, to my relatives and  
5 friends, both those who stayed for the pain and those who  
6 could not. I ask their forgiveness. Foremost, your Honor,  
7 I apologize to Alice, my wife, who has learned the meaning  
8 of the words "for better or worse." I apologize to my  
9 children, who every day must deal with the fact that their  
10 father, a man they love, is a felon, a law breaker, a  
11 criminal. I ask their forgiveness as well.

12 It is my desperate hope that I will have the time  
13 and ability to try and make it right for them, to try and  
14 ease the burden that I have been forced -- that I have  
15 forced upon them, which they will carry every day of their  
16 lives.

17 I want the record to state that there is blame in  
18 this matter, your Honor. And that blame rests squarely with  
19 me. I will carry that blame with me until the day that I  
20 die.

21 THE COURT: You know, you talk about a nightmare.  
22 Nightmares come from the unconscious, the subconscious.  
23 What you are facing is something that you were conscious or  
24 you got yourself into. Your lawyer tells me that, in 30  
25 years, he hasn't faced a situation like this. But he has

1     only faced it from two aspects; number one, as a prosecutor;  
2     aspect number two, as a defense counsel. There is a third  
3     one. The third one is as a representative of society. When  
4     you look on a person to be sentenced, not only as a human  
5     being, but as to what he has done to society. The  
6     suggestion has been made that you are a very altruistic  
7     person, that you are a great guy and maybe you are two  
8     people. I don't know.

9             Let's start with looking from society's viewpoint  
10    at the kidnapping. What would you have done, Mr. Weinig, if  
11    your son Jacob had been kidnapped and some lawyer knew about  
12    it, and knew he could get him out of there, and didn't do  
13    anything? You didn't think about that, did you?

14            I insisted on getting the tape and listening to  
15    your conversation with Hirsch when you talk about it, very  
16    flip, matter of fact. You couldn't care less, but if it had  
17    been your son, you would have cared more.

18            The suggestion is made to compare you to Harry  
19    Truman. Truman certainly wouldn't have done that. As a  
20    member of the human race, he had dealings with other people  
21    too.

22            You apparently were able to divide yourself in  
23    two, outside the office and inside. Even when Clooney came  
24    in, your attorney says you let it happen. Sure you let it  
25    happen, because you went, and you stuck two young associates

1 with the job of cleaning it up.

2 This is a very human thing. I don't know. The  
3 suggestion is made that you are not smart or sophisticated.  
4 I can't believe that. You thought that the money laundering  
5 was coming in gray market goods. But even you admit that  
6 you knew where it was coming from, at least at the end.

7 What are we talking about? Well, the figures  
8 vary, from 72 million dollars, that the Swiss bankers  
9 claimed to have laundered, to nineteen, which I understand  
10 you are accused of. Nineteen million dollars in drugs is a  
11 lot of money. That much drugs is a lot of pain. If Samuel  
12 or Jacob were the ones who were using the drugs, you would  
13 be singing a different story, an entirely different song.

14 Now, you ask, Mr. Weinig, for as much mercy as I  
15 can give. You and your client should feel glad that this is  
16 a guidelines case and not something more. Not in the old  
17 days. Because if it had been in the old days, I would have  
18 given him the statutory maximum.

19 It is the judgment of the Court in Harvey Weinig  
20 that he be remanded to the custody of the Attorney General  
21 for a period of 135 months; thereafter, to serve three years  
22 supervised release, \$100 special assessment.

23 You have a right to appeal, Mr. Weinig. I don't  
24 know of any grounds for any such appeal. But if you want  
25 to, you can. If Mr. Weinig does not file those appeals, you

1 can, or you can ask the clerk to do it.

2 Are there outstanding counts left?

3 MR. GOODMAN: Yes, your Honor. At this point,  
4 the government would move to have those counts dismissed.

5 THE COURT: Are there any underlying indictments  
6 or things like that?

7 MR. GOODMAN: Yes, your Honor. There are two  
8 underlying indictments, your Honor.

9 THE COURT: At this point, the government is  
10 going to orally nolle those?

11 MR. GOODMAN: Yes, your Honor.

12 THE COURT: Mr. Weinig?

13 MR. WING: Your Honor, may the defendant be  
14 permitted to surrender directly to the institution?

15 THE COURT: Yes. Two weeks.

16 MR. WING: Could your Honor recommend to the  
17 Department of Prisons that he be permitted to go to Allen  
18 camp?

19 THE COURT: I will not. It is up to the  
20 Department of Prisons. I find that any recommendations I  
21 make are not paid any attention to anyway. So they do what  
22 they want.

23 MR. WING: Could your Honor --

24 THE COURT: Whether I recommend it or not doesn't  
25 mean a damn thing.



1           MR. WING: Given the length of the sentence, your  
2 Honor, it may make some difference if your Honor at least  
3 indicates on the record that you would have no objection to  
4 his serving in a minimum security camp.

5           THE COURT: I have no objection to his serving in  
6 anyplace. It is up to them, not me. I have enough work to  
7 do without picking out prisons for people. Besides that, as  
8 I said, they don't pay any attention when I do.

9           All right. Two weeks from today, Mr. Weinig, if  
10 you are not designated, you are to surrender to the marshal  
11 in this district.

12           Do you understand?

13           THE WITNESS: Yes, your Honor.

14           THE COURT: Does the government have any  
15 objection to the form of the sentence? If so, say so now?

16           MR. GOODMAN: No, your Honor, we do not.

17           THE COURT: Does the defense have any objection  
18 to the form of the sentence?

19           MR. WING: No, your Honor.

20           (Proceeding concluded.)

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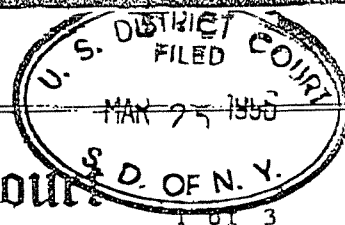
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AO 245 S (Rev. 4/90) Sheet 1 - Judgment in a Criminal Case



# United States District Court

SOUTHERN

District of

NEW YORK

UNITED STATES OF AMERICA

V.

HARVEY WEINIS

(Name of Defendant)

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: S4 94cr00981-01(KTD)

S2 95cr00167-03(KTD)

JOHN WING

Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 38☐ was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
T. 18, USC, section 1956(h)	Conspiracy to commit Money Laundering	11/30/94	1
T. 18, USC, sections 982(a) (1) and 982(b) (1)(A)	Criminal forfeiture	11/30/94	38

The defendant is sentenced as provided in pages 2 through \_\_\_\_\_ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).☒ Count(s) All outstanding counts (is)(are) dismissed on the motion of the United States.☒ It is ordered that the defendant shall pay a special assessment of \$ 100.00, for count(s) 1, 38, which shall be due ☐ immediately ☐ as follows:

All underlying Indictments Nolleed on oral motion of the govt.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 065-38-3733Defendant's Date of Birth: 3/26/48

Defendant's Mailing Address:

110 Riverside Dr.  
Apt. 5F  
New York, NY 10024

Defendant's Residence Address:

same

MARCH 22, 1996

Date of Imposition of Sentence

Signature of Judicial Officer

KEVIN THOMAS DUFFY-USDO

Name &amp; Title of Judicial Officer

MARCH 22, 1996

Date

EXHIBIT

12

MAR 25 1996

Form 4/90 Sheet 2 - Imprisonment

Defendant: HARVEY WEINIG

Judgment—Page 2 of 3

Case Number: S4 94cr00981-01(KTD)

S2 95cr00167-03(KTD) IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of \_\_\_\_\_

ONE HUNDRED AND THIRTY-FIVE(135) MONTHS.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States marshal.

☐ The defendant shall surrender to the United States marshal for this district,

☐ at \_\_\_\_\_ a.m.  
☐ at \_\_\_\_\_ p.m. on \_\_\_\_\_  
☐ as notified by the United States marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

☒ before 2 p.m. on 4/5/96  
☒ as notified by the United States marshal.  
☐ as notified by the probation office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_  
\_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_

\_\_\_\_\_  
Deputy Marshal

(Rev. 4/90) Sheet 3 - Supervised Release

Defendant: HARVEY WEINIG

Judgment—Page 3 of 3

Case Number: S4 94cr00981-01(KTD)

S2 95cr00167-03(KTD) **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE(3) YEARS.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- ☐ The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- ☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.
- ☐ The defendant shall not possess a firearm or destructive device.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

# PETITION FOR COMMUTATION OF SENTENCE

Print or type legibly

Relief sought: (check one)

- ☒ Reduction of Prison Sentence Only    ☐ Reduction of Prison Sentence and Remission of Fine  
☐ Remission of Fine Only    ☐ Other \_\_\_\_\_

TO THE PRESIDENT OF THE UNITED STATES:

PETITIONER, Harvey Weinig, a Federal prisoner,  
First Name Middle Last  
Reg. No.                     , confined in the Federal Institution at Port Dix, New Jersey,  
in seeking a commutation of sentence, states that he was born on                       
and has Social Security No.                     . (If not a United States citizen, indicate country of  
citizenship: N/A.)

PETITIONER was convicted on a plea of guilty in the United States District Court  
guilty, not guilty, nolo contendere  
for the Southern District of New York of the crime of: Conspiracy  
to launder money (18 U.S.C. Section 1956(h)); misprision of felony  
(Describe the offense(s) of which you were convicted; provide citation of statute(s) violated, if known.)  
(18 U.S.C. Sections 2 and 4); and forfeiture of assets used in  
furtherance of a conspiracy (18 U.S.C. Section 982).

involving the following circumstances: As to the first count, I assisted various  
(Describe accurately what you did, including your role in the offense.)  
individuals in laundering money, after realizing that the funds were  
proceeds of illegal drug sales.

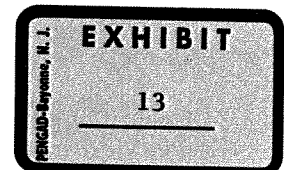
As to the second count, I became aware, after the fact, that a client of mine  
had detained an individual who had defrauded my client and owed my client  
money. I subsequently instructed associates in my law firm to prepare docu-  
mentation that gave my client a security interest in some of the individual's  
assets. I did not report to the authorities that my client had previously  
detained the individual.

and was sentenced on March 22, 1996, to imprisonment for 135 months  
(length of sentence)  
and/or to pay a (☒ fine ☐ restitution) of \$ 100.00 and/or to supervised release or special  
(check one - do not include special assessment)  
parole for 3 years and/or to probation for                     .  
(length of sentence) (length of sentence)  
My (☒ fine ☐ restitution) (☒ has ☐ has not) been paid; the balance owed is \$ 0.

PETITIONER began the service of his sentence on April 19, 1996. He will be released  
from confinement on July 18, 2007. If eligible for parole, he (☐ was ☐ will be) eligible  
on N/A, and his application for parole was (☐ granted ☐ denied).

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April 1994



If your conviction or sentence was appealed or otherwise challenged, complete the following paragraph:

PETITIONER appealed to the United States Court of Appeals, where the judgment was affirmed on \_\_\_\_\_, 19\_\_\_\_. A petition for a writ of certiorari (☐ was ☐ was not) sought from the Supreme Court, and (☐ granted ☐ denied) on \_\_\_\_\_, 19\_\_\_\_. Petitioner (☐ did ☐ did not) challenge his conviction or sentence under 28 U.S.C. §2255 (habeas corpus). (Provide citations to court opinions, if known: \_\_\_\_\_.)

In this paragraph, list every arrest, either as a juvenile or an adult, whether or not resulting in a conviction. For each incident list date, nature of offense charged, law enforcement authority involved, location, and disposition, if known.

PETITIONER'S criminal record, other than the instant offense, is as follows:

No previous offenses

PETITIONER respectfully prays that he be granted clemency for the following reasons: \_\_\_\_\_

See attached

The statements contained herein are true to the best of my knowledge and belief, and I understand that any misstatements of material fact contained herein may subject me to criminal prosecution and/or cause adverse action on my petition for executive clemency.

4/6/2000  
Date

Harvey Weing  
Signature of Petitioner

If space is insufficient, additional pages may be added. Letters and/or other supporting material may be submitted with petition.

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PHOTOCOPY

It is difficult to express how deeply I regret my criminal conduct. I am ashamed to have abandoned my lifelong principle of integrity. I am ashamed to have forsaken my ethical obligations as an attorney and know that I will never be able to practice law again. I am ashamed of the devastation that my criminal conduct has visited on my innocent family – on my wife Alice, who now has a felon for a husband, and on my teenage sons Jake and Sam – whose father is a criminal. I am ashamed that the labels “felon,” “money launderer” and “convict” now follow me wherever I go.

Though I did not know at first that I was helping a client of my law partner launder the proceeds of drug sales, I ultimately came to realize that this was the case. As soon as I made that realization, I should have taken action, but I did not.

As to my client’s abduction of an individual, I did not learn of the kidnapping until after the individual had been released. However, once I learned that the detention had occurred, I should not have allowed the client to use my offices and associates to assist him in collecting the debt he was owed by the kidnap victim.

As I told the Judge who sentenced me, the blame for all my criminal acts rests squarely with me, and I will shoulder that blame until the day I die. Please permit me to rejoin my family and society, after five long years of incarceration, so that I can begin to repair the damage I have caused my family and seek to contribute positively to my community.

**HARVEY WEINIG'S MEMORANDUM IN SUPPORT OF  
HIS PETITION FOR COMMUTATION OF SENTENCE**

**I. INTRODUCTION**

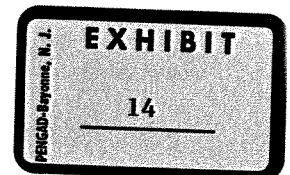
Harvey Weinig – a father of two boys, a lawyer with a history of public service, a man with no prior criminal record – naively permitted himself to become involved in legal work in furtherance of a money laundering conspiracy. He pleaded guilty in 1995 and cooperated with the government.

Eleven of Mr. Weinig's co-defendants, including the leaders of the conspiracy, pleaded guilty and were sentenced to prison terms of three years or less. Mr. Weinig – in spite of the absence of any prior criminal record, his minor role in the operation, and his cooperation – pleaded guilty and received a sentence of 11 years and three months. This gross disparity in sentencing shocks the conscience and violates fundamental principles of fairness and equal treatment under the law. While the leaders of the conspiracy are free, Mr. Weinig, who has already been incarcerated for almost four years, faces an additional seven years in prison.

Mr. Weinig is a good man who made a horrible, life-changing mistake. He forthrightly admitted his wrongdoing, is deeply ashamed of his actions, and has suffered the severe punishment of almost four years in prison.<sup>1</sup> His children – one of whom has been institutionalized for severe depression – desperately need him. This petition is his only hope for

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<sup>1</sup> Mr. Weinig has been confined in Federal Correctional Institution ("F.C.I.") Fort Dix, New Jersey since April 19, 1996.



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equal justice.<sup>2</sup> Mr. Weinig respectfully requests that the President commute his sentence to five years, so that he may rejoin his family and contribute positively to his community after one more year of incarceration.

## II. BACKGROUND

### A. Personal Background

Harvey Weinig was born in Brooklyn, grew up in Queens and attended Hobart College on a Regent's Scholarship. Mr. Weinig's father died while Mr. Weinig was in college, leaving Mr. Weinig to take care of his mother and mentally disturbed younger sister. After graduating from Hofstra University School of Law, Mr. Weinig worked as a clinical professor in Hofstra's poverty law clinic. He married Alice Morey in 1980, and they had two sons – Jake, now 17, and Sam, now 14.

### B. Events Leading to Plea

In May 1993, following the dissolution of the law firm where he had been a partner for a number of years, Mr. Weinig formed a small law firm in New York City with a newly-arrived partner from his old firm named Robert Hirsch. At that time, Mr. Weinig had

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<sup>2</sup> No other forms of relief are available to Mr. Weinig. See 28 C.F.R. §1.3 (1997) (setting forth the requirement of the absence of other forms of relief). Although Mr. Weinig's trial attorney moved pursuant to Rule 35(c) for correction of sentence on grounds of clear error, the District Court did not rule on the motion in a timely fashion. The District Court has no power to correct or reduce the sentence under Rule 35(a) because the sentence has not been overturned on appeal and remanded to the district court. Eligibility for reduction of sentence on motion by the government under Rule 35(b) expired March 22, 1997, one year after sentencing. Mr. Weinig's right to appeal the sentence directly expired on April 1, 1996. Fed. R. App. P. 4(b). Finally, his right to attack the sentence collaterally has expired. See 28 U.S.C. § 2255(1) (1998) (one-year limitations period for collateral attack on federal conviction).

known Mr. Hirsch for less than a year and was unaware of the fact that Mr. Hirsch and one of Mr. Hirsch's clients, Peter Tohmes, had been involved for years in a conspiracy to launder the proceeds of United States drug sales in Europe and South America.

Soon thereafter, Mr. Hirsch asked Mr. Weinig for assistance in instituting legal actions to recover certain funds that the DEA had seized from Mr. Tohmes, and in processing certain wire transfers of funds for Mr. Tohmes. Mr. Hirsch advised Mr. Weinig that Mr. Tohmes was a legitimate businessman involved in the buying and selling of "gray market goods," and produced documents and business records to corroborate his client's legitimacy. Mr. Weinig naively accepted Mr. Hirsch's representations as to the propriety of the transactions. Over time, Mr. Weinig came to realize that Mr. Tohmes' business was highly irregular and did not seem to be conducted as Mr. Hirsch had represented. Nonetheless, Mr. Weinig felt trapped in the situation, and exercising what he later acknowledged to be bad judgment, continued to assist in processing wire transfers on behalf of Mr. Tohmes pursuant to Mr. Hirsch's instructions.

It was not until September 1994, when Mr. Hirsch advised Mr. Weinig that Colombian drug dealers had threatened to kill Mr. Hirsch and his family, that Mr. Weinig came to realize that Mr. Tohmes' funds were most likely the proceeds of illicit drug transactions. As it turned out, Mr. Hirsch was told of these Colombian death threats by federal agents who had arrested Mr. Hirsch and confronted him with the choice of spending his life in jail for money laundering or earning a 5K1.1 letter by working as a secret government informant. Mr. Hirsch agreed to serve as an informant and spent the next two months secretly taping conversations with Mr. Weinig and others.

In November 1994, Richard Spence, a retired fireman whom Messrs. Hirsch and Weinig had hired to assist in the transportation of money on behalf of Mr. Tohmes, sought Mr. Weinig's legal assistance in recovering approximately \$237,000 that Mr. Spence had been fraudulently induced to invest in an insolvent mortgage company by an individual named James Clooney.<sup>3</sup> At the same time, but without Mr. Weinig's knowledge, Mr. Spence had Mr. Clooney detained against his will to convince him to repay the \$237,000.<sup>4</sup> Mr. Weinig learned of Mr. Clooney's detention only after Mr. Clooney had been released.<sup>5</sup> Despite learning that the ~~abduction had occurred. Mr. Weinig instructed his associates to prepare the necessary~~ documentation that would transfer certain assets of Mr. Clooney to Mr. Spence in repayment of Mr. Clooney's legitimate debt to Mr. Spence. Mr. Weinig did not report Mr. Spence's activities to the authorities.<sup>6</sup>

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<sup>3</sup> For a more detailed description of how Mr. Weinig became involved with Messrs. Tohmes and Spence, see Letter to Mary Jo White, February 28, 1997 (Ex. I).

<sup>4</sup> It was later learned that Mr. Clooney was provided with steaks and prostitutes during his "detention." Also, the law enforcement agents, who had learned of the kidnapping from Mr. Hirsch, took no action and did not arrest Mr. Spence or any of the other participants.

<sup>5</sup> In fact, Mr. Weinig and his wife were out of the country on vacation when Mr. Clooney's detention took place.

<sup>6</sup> It is uncontested that Mr. Weinig did not actually participate in the "kidnapping" scheme and did not know about the detention until after Mr. Clooney was already released. As Mr. Spence's attorney, Mr. Weinig had an ethical obligation not to disclose confidential knowledge of his client's prior criminal acts. See, e.g., People v. Belge, 83 Misc.2d 186, 190, 372 N.Y.S.2d 798, 803 (N.Y. Crim. Ct. 1975) (dismissing indictment against attorney who maintained client's confidence by failing to reveal location of murder victim's body on grounds of privilege), aff'd 376 N.Y.S. 2d 771 (N.Y. App. Div.), aff'd 41 N.Y.2d 60 (N.Y. 1976).

**C. Guilty Plea and Cooperation with the Government**

In 1995, Mr. Weinig pleaded guilty to two felonies, agreed to forfeit a house and other assets to the government, and cooperated with the government's continuing investigation and prosecutions.<sup>7</sup> Mr. Weinig willingly submitted to extensive questioning from the U.S. Attorney's Office and the FBI regarding the activities referenced in the indictment, and disclosed to the government that Mr. Hirsch had lied in the course of his cooperation and was preparing to flee the country. Mr. Weinig even offered to wear a wire to assist the government in gathering evidence against Mr. Hirsch.

In November 1995, in the midst of Mr. Weinig's cooperation, the U.S. Attorney's Office transferred responsibility for the case from AUSA Mark Goodman to AUSA Lev Dassin. Mr. Weinig, eager to continue his cooperation, promptly sent Mr. Dassin a letter attaching transcripts and memoranda of numerous conversations with Mr. Hirsch. (Ex. D). For no apparent reason, Mr. Dassin declined to follow up on Mr. Weinig's fact memoranda and offers to appear for further debriefings. The government subsequently denied Mr. Weinig a 5K1.1 letter which would acknowledge his cooperation, even as Messrs. Hirsch (who had lied to the government and sought to flee) and Spence received 5K1.1 letters and escaped more serious punishment.

In Mr. Weinig's case, the Federal Sentencing Guidelines called for a custodial term ranging between 108 and 135 months. See Pre-Sentence Investigation Report at 16 (Ex. B).

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<sup>7</sup> Mr. Weinig pleaded guilty to conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) and misprision of a felony in violation of 18 U.S.C. § 4. In addition, Mr. Weinig agreed to criminal forfeiture of a home in Amagansett, New York, and his interest in the assets of the Hirsch Weinig law firm, pursuant to 18 U.S.C. §§ 982(a)(1) and (b)(2), and 21 U.S.C. § 853(p). See Plea Agreement, Sept. 20, 1995, at 5-6 (Ex. B).

The sentencing judge, without justification – and apparently ignoring Mr. Weinig's ethical obligations to preserve client confidences relating to the prior kidnapping – imposed the maximum sentence permitted by the guidelines.<sup>8</sup>

### III. BASES FOR COMMUTATION

The President should commute Mr. Weinig's sentence for several reasons:

(1) Mr. Weinig's sentence was unconscionably disproportionate to the sentences given to his

~~more culpable co-defendants, as well as the sentences generally given to money launderers;~~

(2) Mr. Weinig has made and will make a positive contribution to society; (3) Mr. Weinig's family needs him; and (4) Mr. Weinig deeply regrets his actions and does not require further punishment or rehabilitation.

#### A. Gross Disparity of Sentence

##### 1. Gross Sentencing Disparity is an Appropriate Basis for Granting Commutation

Our system of justice is based on the principle of equal sanctions for equally culpable conduct. See United States v. Perez, 767 F.2d 1 (1st Cir. 1995) (Aldrich, J., concurring). As the court declared in granting a defendant a downward departure under the sentencing guidelines in United States v. Hart, 876 F.Supp. 4, 6 (D.D.C. 1995), "a grave injustice would be committed if no consideration was given to unwarranted disparities in sentences

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<sup>8</sup> At the sentencing hearing, Judge Duffy specifically referred to Mr. Weinig's knowledge of and failure to report Mr. Clooney's detention. See Transcript of Sentencing Hearing, March 22, 1992, at 13 (Ex. E). To the extent that Judge Duffy based the sentence in part on Mr. Weinig's failure to report the detention after he learned of it, this consideration was improper in light of Mr. Weinig's ethical obligation not to disclose client confidences. See note 6 supra.

between co-defendants." Accordingly, "it is appropriate for a president to grant a pardon to prevent or mitigate the comparative injustice that occurs when one person's punishment is disproportionate to that given to (1) other participants in the same crime, and/or (2) those convicted of similar crimes within the jurisdiction." Kathleen Dean Moore, Pardon for Good and Sufficient Reasons, 27 U. Rich. L. Rev. 281, 287 (1993); see also Daniel T. Kobil, The Quality of Mercy Strained: Wresting the Pardoning Power From the King, 69 Tex. L. Rev. 569, 627 (1991). The U.S. Attorney's Manual explicitly lists "disparity or undue severity of sentence" as an appropriate basis for granting commutation. See U.S. Attorney's Manual § 1-2.113 ("Standards for Considering Commutation Petitions"), September 1997.

In furtherance of this principle of equal justice, presidents have exercised the pardon power to commute the sentences of defendants who have been inexplicably treated more harshly than similarly situated co-defendants. For example, President Carter commuted the 20-year sentence of Watergate conspirator G. Gordon Liddy after four years and three months because none of his co-defendants in the Watergate break-in and cover-up had been sentenced to more than a year and a half in prison.<sup>9</sup> Similarly, when the Parole Commission granted parole to former Maryland governor Marvin Mandel's codefendants but denied parole to Mr. Mandel, President Reagan commuted Mr. Mandel's sentence.<sup>10</sup> As discussed below, Mr. Weinig's

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<sup>9</sup> Daniel T. Kobil, The Quality of Mercy Strained: Wresting the Pardoning Power From the King, 69 Tex. L. Rev. 569, 627 & n.346 (1991); see also Krajick, The Quality of Mercy, 5 Corrections Magazine, June 1979, at 53 (citing unfair disparity as the basis of the Liddy commutation).

<sup>10</sup> Department of Justice Press Release, Dec. 3, 1981 (Ex. G). See also Charles S. Clark, Reagan Parsimonious in Use of Pardon Power, Congressional Quarterly, Nov. 3, 1984, at 2878-79. Although the disparity in Mandel's case involved the inconsistent actions of the Parole Commission rather than sentencing judges, the justification for the commutation was the same as here: similarly culpable participants in the same crime should be similarly punished.

sentence violates the same fundamental principles of fairness and justifies the extraordinary remedy of executive clemency.

**2. Mr. Weinig's Sentence Was Grossly Disproportionate to the Sentences Given to More Culpable Co-Defendants**

Messrs. Hirsch and Tohmes carried on their money laundering conspiracy for some time before Mr. Weinig became an (initially unwitting) participant. Even after Mr. Weinig became knowingly involved in illegal activities, he simply implemented Mr. Hirsch's instructions to file legal actions, document transactions or wire funds, and did not play a proactive or leadership role in the conspiracy. Nonetheless, as set forth below, Mr. Weinig received a sentence far more harsh than the sentences given to the acknowledged "ringleaders" of the money laundering and kidnapping schemes:

- Robert Hirsch, the lawyer who led Mr. Weinig into the scheme, who continued to engage in money laundering while acting as a government informant, who was re-arrested by the government for these continued criminal activities and for lying to the U.S. Attorney's Office and FBI, and who pleaded guilty to numerous money laundering, bank fraud and false statements counts, was sentenced to a prison term of three years.
- Richard Spence, who became a principal participant in the conspiracy, who had an extensive prior criminal record, and who pleaded guilty to money laundering, wire fraud, false statements, extortion by kidnapping and mail fraud counts, was sentenced to a prison term of three years.
- Peter Tohmes, the principal in the drug money laundering scheme, who pleaded guilty to a money laundering conspiracy charge, was sentenced to a prison term of eight years and one month, but has spent only a short amount of time in jail, pending a treaty transfer to Israel.
- Gary Salerno, a courier in the money laundering scheme who also carried out Mr. Spence's kidnapping and who had just been sentenced in the Eastern District of New York to a prison term of 25 years on unrelated racketeering, extortion and conspiracy counts,<sup>11</sup> pleaded guilty to a money

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<sup>11</sup> See United States v. Salerno, Case No. 95-CR-00437 (Docket No. 160).

laundering conspiracy charge, and was sentenced to a prison term of nine years, to run concurrent with his 25-year sentence.

- Leon and Rachel Weinmann, who were Peter Tohmes' bankers in Switzerland and who "acknowledged having moved between \$70 million and \$100 million with Peter [Tohmes] during [1993]"<sup>12</sup> were sentenced to one year unsupervised probation on the condition that they return to Switzerland to respond to money laundering charges there. The Weinmanns returned to Switzerland, where they have never been tried or convicted on any charges.
- Nine other defendants who served as couriers or otherwise assisted in collecting, holding and/or transferring illegal funds, including a New York City police officer and a registered broker, pleaded guilty to money laundering and/or other felonies and were sentenced to terms ranging from probation to a prison term of two years and three months.
- Several other participants charged in the indictment had the charges against them dismissed.

It is unconscionable that Mr. Weinig, a belated and minor participant in the conspiracy, should serve a term of more than 11 years, while Mr. Hirsch, the leader of the money laundering scheme, and Mr. Spence – a major participant in the scheme who had a prior criminal record and who directed the related kidnapping – both received a sentence of only three years. It is unconscionable that Mr. Weinig, who pleaded guilty to failing to report a kidnapping that he learned of after the release of the victim, should receive a sentence longer than that of Mr. Salerno, the individual who actually conducted the kidnapping and who had only months earlier been sentenced to a term of 25 years on assorted racketeering, extortion and conspiracy charges. While the conspiracy's leaders are already free, Mr. Weinig faces more than seven additional years in prison.

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<sup>12</sup> See Criminal Complaint, ¶ 190 (Ex. A).



**3. Mr. Weinig's Sentence Is Grossly Disproportionate to Money Laundering Sentences Nationwide**

Mr. Weinig's sentence is also grossly unfair because he has been punished far more severely than convicted money launderers in other cases, contrary to the principles of "equality and proportionality" underlying the sentencing guidelines. See U.S. v. Sardin, 921 F.2d 1064, 1067 (10th Cir. 1990). The median sentence for money laundering convictions is 24 months, according to recent U.S. Sentencing Commission statistics.<sup>13</sup> Yet Mr. Weinig's sentence was 135 months – more than five times as long as the median sentence for his crime.<sup>14</sup>

The U.S. Sentencing Commission itself has recognized the inequities that have arisen in sentencing in the money laundering context, observing that "the broad and inconsistent use of money laundering charges, coupled with an inflexible, arbitrarily determined guideline structure, is resulting in substantial unwarranted disparity and disproportionality in the sentencing of money laundering conduct." United States Sentencing Commission, Sentencing Policy for Money Laundering Offenses, including Comments on Department of Justice Report, Sept. 18, 1997, at 9. In this case, the gross disparity between Mr. Weinig's 135-month sentence and the 24-month median sentence for money launderers further demonstrates the unconscionability of Mr. Weinig's sentence and warrants commutation.

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<sup>13</sup> United States Sentencing Commission, 1998 Sourcebook of Federal Sentencing Statistics at 111 (Table: "Average Length of Imprisonment for Appeals Defendants [sic] in Each Primary Offense Category, Fiscal Year 1998").

<sup>14</sup> As noted above, Mr. Weinig also pleaded guilty to misprision of felony. However, the underlying offense for that count implicated a sentencing guideline (§2B3.2) that resulted in a far lower offense level than the guideline for money laundering (§2S1.1). Also, the conduct underlying the misprision plea did not constitute "relevant conduct" to the money laundering guideline that would increase Mr. Weinig's "total offense level" for sentencing purposes. See Pre-Sentence Investigation Report at 31-32 (Ex. B). Therefore, it is appropriate to compare Mr. Weinig's sentence with those imposed on other individuals convicted of money laundering.

**B. Mr. Weinig Has Made and Will Make a Positive Contribution to Society**

Mr. Weinig's extraordinary history of assisting other people in need also supports commutation of his sentence. Dozens of people, from all walks of life, submitted letters on Mr. Weinig's behalf in connection with his sentencing, describing the extraordinary positive influence that Mr. Weinig had on their lives and in his community.<sup>15</sup> Moreover, despite Mr. Weinig's lengthy incarceration – which often causes many “friends” and supporters to disappear – numerous individuals have submitted letters in support of Mr. Weinig in connection with this petition.<sup>16</sup> All these letters – whether written before or after his incarceration – speak far more eloquently of Mr. Weinig's character than anything a lawyer could say.

In her 1995 letter to the sentencing judge, Associate Dean of CUNY School of Law Susan Bryant, who has known Mr. Weinig for more than 21 years, stated that his life has been “spent caring about people and doing the little acts that each of us can do, but often do not, to make our friends' lives a little better. Harvey will willingly help people who ask for it; perhaps, more remarkably, he often senses that somebody needs help and offers it without anybody asking.” See Letter of Susan Bryant at 5 (Ex. J.5). In her more recent letter submitted in support of this petition, Professor Bryant describes the positive influence Mr. Weinig had on his community:

Before his incarceration, Harvey lived a life of good deeds for all around him. He befriended several teenagers whose own fathers had abandoned them; he put two children other than his own through school; he borrowed money so that a friend could start a business; and he provided free legal services to those who needed

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<sup>15</sup> These letters, which are attached as Exhibits J.1 through J.52 in alphabetical order, are from a diverse group of friends, neighbors, relatives, professional colleagues, clients and employees.

<sup>16</sup> These letters are attached as Exhibits K.1 through K.13 in alphabetical order.

them and he was well liked by everyone he met from the doorman to the presidents of companies.

See Letter of Susan Bryant at 3 (Ex. K.2).

Brooklyn Law School Professor Aaron Twerski, who has known Mr. Weinig since Mr. Weinig was in law school, explained:

He has a sense of caring and sensitivity and a capacity to love that is awesome. All of us who have been touched by him know this in an unmistakable way . . . . For me and for many others, Harvey was our Rabbi . . . . Over the years Harvey reached out to help countless troubled teenagers through difficult periods of their lives. He paid tuition for them at private schools when they had special needs that could not otherwise be met. On several occasions he took out loans to do so.

See Letter of Aaron D. Twerski at 2 (Ex. J.47).

Mr. Weinig was continuously extending himself far beyond the ordinary bounds of human decency and friendship. Laura Blankfein, who has known Harvey for more than 15 years, described him as "one of those people . . . that friends and extended family always knew they could turn to for help." See Letter of Laura J. Blankfein at 2 (Ex. J.2). Her husband added:

[Harvey] gave money or legal services to babysitters, garage men, elevator operators and everyone who had a sad tale and Harvey's ear . . . . Particularly striking was the total absence of calculation: most of the people he helped could never be in a position to return the favor.

See Letter of Lloyd C. Blankfein at 1-2 (Ex. J.3).

Harvey Weinig truly loved being a lawyer because he genuinely enjoyed helping other people. During his almost 20 years of practicing law, Mr. Weinig devoted an extraordinary amount of his time to pro bono work for people who needed help and couldn't afford legal fees. Many of the letters submitted in connection with his sentencing mention yet another person to whom Harvey Weinig provided such services. Professor Twerski reports sending "numerous

members of our community who had personal or business problems to Harvey. He never charged a nickel and gave them excellent and devoted representation." See Letter of Aaron D. Twerski at 2 (Ex. J.47). Former Assistant District Attorney Barry Birnbaum cited as an example Mr. Weinig's representation of a gas station attendant "who had fallen on difficult times and whom Harvey represented in a variety of matters over the years without ever charging a fee." See Letter of Barry N. Birnbaum at 2 (Ex. J.4).

Jennifer Wood, whose young niece had been twice kidnapped by "a very impaired alcoholic's" mother, stated that when the need arose for legal assistance, "every other lawyer we contacted in New York never got beyond the fact that my brother couldn't pay their requested retainer." See Letter of Jennifer L. Wood at 1-4 (Ex. J.52). Mr. Weinig agreed to take on the litigation without charge, worked "tirelessly" on the case for years and ultimately prevailed.

Ms. Wood emphasized that "this was a truly altruistic act on Harvey's part . . . [which] could not accrue to his personal, professional or financial interest." Id. at 3. Ms. Wood stated:

I will not overreach to speculate about why so many other people so clearly respect and admire this man. I do know that the lives of the entire family of one small child, strangers to this man, were inalterably changed by his simple act of kindness to us.

Id. at 4.

Mr. Weinig continued his public service work even after his arrest and imprisonment. Jonathan Weiss, the Director of Legal Services for the Elderly in New York, stated that he "was surprised when he [Mr. Weinig] came to see me [subsequent to Mr. Weinig's arrest] to volunteer to help us on our cases for the elderly poor . . . . He explained that the publicity surrounding his arrest and indictment had effectively destroyed his law practice but he wanted to do something worthwhile, while awaiting the resolution of his case." See Letter of Jonathan A. Weiss at 1 (Ex. J.51). Mr. Weiss found that Mr. Weinig had "remarkable" rapport

with the clinic's elderly clients and was of considerable assistance to them. During the time between his arrest and incarceration, Mr. Weinig also read to the blind and did volunteer work at the Coalition for the Homeless in New York City.

Even since his imprisonment, Mr. Weinig has taught literacy skills to inmates, helped illiterate prisoners write letters to their families, tutored inmates studying for the GED, functioned as a law librarian, conducted creative writing workshops, and taught an aerobics class. See Harvey Weinig's Activities While at Fort Dix (Ex. F).<sup>17</sup> Mr. Weinig's Housing Unit

~~Counselor Luis Reyes, provides numerous accolades regarding Mr. Weinig's activities at Fort Dix.~~ Mr. Reyes wrote that Mr. Weinig's "work achievement and his demeanor during work performance has been exceptional." See Letter of Luis Reyes (Ex. N.1). Mr. Reyes described Mr. Weinig as "outstanding" and "gifted," and further stated that Mr. Weinig has "in several instances at the request of staff acted as a facilitator between the staff and inmates with uniformly positive results." Id. Mr. Reyes concluded that Mr. Weinig "has received unequivocal praise for his work from the institution staff. He is seen as an asset to our institution." Id.

Inmates who have come to know Mr. Weinig concur with Mr. Reyes' assessment. Thomas Mickes writes that when he was "most upset" after being denied parole, Mr. Weinig counseled him to remain calm and helped him develop a positive thinking course for fellow inmates. See Letter of Thomas Mickes (Ex. N.3). Jose A. Pons explained that Mr. Weinig has taught him "law, English, philosophy, history, common sense" and has given him "back some of

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<sup>17</sup> The letters from various individuals at Fort Dix, including Mr. Weinig's housing unit counselor, are attached as Exhibit N.

the values and principles in life that [he] had lost or . . . was about to lose.” See Letter of Jose A. Pons at 2 (Ex. N.4). Mr. Pons added: “Thanks to [Mr. Weinig], I can proudly say that I have become a much better person, free of hate and bitterness toward those who did me wrong.”). Id. at 2.

Upon his release, Mr. Weinig will seek to continue his public service, and he will be an asset to his community. In particular, Mr. Weinig has expressed an interest in counseling youths traumatized by crime. Lucy Friedman, who served for twenty years as Executive

~~President of the After-School Corporation, a project dedicated to after-school programs in New York City public schools, informs the Office of the Pardon Attorney that “if Harvey were to be released, [she] would be willing to help him find a position where he could use his talents assisting people in need.”~~ See Letter of Lucy Friedman (Ex. K.7). Clay Hiles, chairman of the Correctional Association of New York, gives his personal assurance that Harvey “will have [an appropriate] job immediately upon release from prison.” See Letter of Clay Hiles at 2 (Ex. K.8).

**C. Mr. Weinig’s Family Needs Him**

Harvey Weinig’s extended incarceration has imposed a terrible punishment on his mother, his wife Alice, and his two young sons, Jake and Sam. The attached letters from family friends, therapists who have counseled Mr. Weinig’s younger son Sam, and Mr. Weinig’s wife Alice provide a powerful statement of the dramatic impact of Mr. Weinig’s incarceration on his family.<sup>18</sup>

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<sup>18</sup> The letters from Sam’s therapists are attached as Exhibit L, and the letters from Mr. Weinig’s wife Alice Morey are attached as Exhibit M.

As many of the letters written about Mr. Weinig attest, Mr. Weinig's greatest passion has always been his two children. Lucy Friedman described Mr. Weinig as "one of the most dedicated loving fathers that [she and her husband] know." See Letter of Lucy Friedman at 2 (Ex. J.17). Cynthia Hayes, an independent management consultant who has known Mr. Weinig for 12 years, reported at sentencing:

Harvey's love for his children has always been a dominant factor in his life, shaping his ideas of how he wants to spend his time, his money and his life. He structured his business so that he could come home early in the evenings, spending more time with his kids than the average professional. He has been very involved in their education, spending hours reading to the boys, helping with homework, participating in school events and generally conveying the idea that education was a wonderfully and valuable thing. He has done his best to foster their interests in sports (getting up at 4:00 a.m. to take Sam to hockey lessons), music, Hebrew school and other activities. Harvey has also taught the boys the importance of community and giving back to the world with the same generosity with which they have been blessed, helping Jake and Sam grow into the well rounded kids that they are.

See Letter of Cynthia Hayes at 2 (Ex. J.22).

Christina Musrey, the producer of the TV show "The Practice," recounted how she first began babysitting for Mr. Weinig's son Jacob when she was a freshman at Columbia University 16 years ago:

After our initial introduction, it took many weeks of evenings spent together before [Harvey] felt comfortable leaving his son Jacob, then ten months old, for a few hours. I was assured, by Alice, that it wasn't me. He was that particular with everyone, including relatives, who had offered to babysit. Every Saturday night, for four years, I showed up at six-thirty and was paid to stay whether he and Alice went out or not. Often, we would all begin talking and Harvey would decide to order in and watch his sons fall asleep. . . . For Harvey, having two children meant that they should never suffer if he could help it, and if they did, he would be there to help them find some sort of lesson in all of it. . . . He took the

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laughter, the fun, the anger and the pain and called it being a father. He was a man who when he loved, loved completely.

See Letter of Christina Musrey at 1-2 (Ex. K.11).

Despite his incarceration, Mr. Weinig has sought to remain a devoted and involved parent. However, his continued absence from his family's daily lives has had a profound effect on them. Ms. Musrey wrote that she has "witnessed an alarming rate of destruction and despair" in Mr. Weinig's family as a result of his extended incarceration, and emphasized how desperately his family needs him. See Letter of Christina Musrey at 2 (Ex. K.11). Lawrence Fox, a longstanding family friend, wrote of Sam and Jake's profound "love for their father and need for his presence," and the importance of Mr. Weinig's return "to assist his sons to become productive contributors to society." See Letter of Lawrence I. Fox at 2 (Ex. K.6).

Mr. Weinig's arrest and incarceration have caused his youngest son Sam to suffer a major depressive disorder. See Letters of Dr. Owen Lewis, a child psychiatrist associated with Columbia University (Exs. L.2 & L.3).<sup>19</sup> Last spring, Sam was committed for six weeks to the New York State Psychiatric Institute for severe, recurrent and incapacitating depression. He now resides away from home in a small boarding school in upstate New York which provides a therapeutic environment. Sam's school counselor, Betsey Thomas-Train, wrote: "[H]is father's incarceration has been the most traumatic event of his childhood, bringing Sam a sense of shame, abandonment, distrust, fear, and a chronic feeling of injustice and inadequacy. I would like to ask for your consideration in granting clemency to his father, so that the ongoing harmful effects

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<sup>19</sup> Mr. Weinig was arrested on November 30, 1994, in front of both his sons, then ages 8 and 11, when eight FBI and DEA agents stormed his house at 5:30 a.m. with guns drawn. See Letter of Alice Morey, Feb. 24, 2000, at 4 (Ex. M).



to Sam could be lessened.” See Letter of Betsey Thomas-Train at 1 (Ex. L.1). Thomas Concannon, who has been an attorney at the Legal Aid Society in New York for 28 years and currently heads the Federal Defender Division of the Eastern District of New York, vividly conveyed Sam’s suffering: “[When Sam] was committed at New York State Psychiatric Institute and not free to leave, he said, ‘So my dad’s in jail and now I am, too.’” See Letter of Thomas J. Concannon at 2 (Ex. K.3). As another family friend points out, “[n]o years of imprisonment can be harder than the knowledge that you cannot hold your child and comfort [him] in a psychiatric ward during [his] greatest time of pain.” See Letter of Tamara R. Igel (Ex. K.9).

Mr. Weinig’s lengthy incarceration has also severely affected his older son Jake. Jake has exhibited his loss by becoming an angry and difficult teenager. While Mr. Weinig continues to be the only adult whom Jake confides in and listens to, their telephone relationship is a tenuous one that is growing more and more difficult to maintain. Jake graduates from high school in June 2001 and already mourns the fact that his father will not be there to witness this important event. See Letters of Alice Morey (Ex. M). The loss of his father, with whom he had such a close relationship, has been devastating.

Doctors Katha Rossein and Ronald Razzore – whom Mr. Weinig represented and who have known the Weinig family for a long time – note that “when a person is imprisoned the true punishment seems to be to the families of the person in jail. We have known Harvey’s wife, Alice, and his teenage sons Sam and Jacob since they were small and nothing has been more devastating than these last four years in which Harvey Weinig has been in prison.” See Letter of Katha Rossein, M.D., and Ronald Razzore, M.D. (Ex. K.12). Mr. Weinig’s wife Alice adds:

As for me, my profound loss and pain is my loneliness for my life companion. The man with whom I shared my days and nights for more than twenty years has been taken from me . . . . However, the

major part of my grief is neither for my personal loss of my life partner nor the financial devastation of his departure. It is for the loss of the family unit which I cherished so and has been taken from me. I don't know if that whole can ever be put back together again, but I know that, as long as I breathe, I will try to make sure that it does.

See Letter of Alice Morey, Feb. 24, 2000, at 4-5 (Ex. M). Commutation of Mr. Weinig's sentence would permit him to provide support to his family, rebuild his relationship with his sons and seek to heal the emotional scars that have resulted from his actions.

~~D. Mr. Weinig Does Not Require Additional Punishment or Rehabilitation~~

Finally, Mr. Weinig does not require further punishment or further rehabilitation.

His arrest, forced resignation from the New York Bar, loss of his legal practice, public humiliation in the press,<sup>20</sup> forfeiture of assets, imprisonment for almost four years<sup>21</sup> and long separation from his family have imposed severe penalties for his conduct. Moreover, given Mr. Weinig's lack of any prior criminal record, his record of public service and devotion to his family, his experience in this case, and his exemplary conduct in prison, there is no basis whatsoever to believe that Mr. Weinig will ever again commit a crime. There is simply no reason to keep Mr. Weinig in prison, and his continued incarceration for seven more years is unnecessary and inappropriate. As Susan Bryant puts it: "I know from talking to [Harvey] that he has intense remorse for his crimes. He does not need to spend another 6 years in jail to learn his lesson or to be sufficiently punished for what he has done." See Letter of Susan Bryant at 3

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<sup>20</sup> Articles in the *New York Times*, the *New York Law Journal*, the *Wall Street Journal*, the *Houston Chronicle*, the *Seattle Post-Intelligencer* and other papers widely publicized Mr. Weinig's involvement in the conspiracy. See Ex. H.

<sup>21</sup> Even if Mr. Weinig's requested commutation were granted, he would still serve five years in prison.

(Ex. K.2). Clay Hiles, present chairman of the Correctional Association of New York and immediate past chairman of the Osborne Association, an organization that provides services to former prisoners, sums up the sad injustice of keeping Harvey Weinig incarcerated:

For more than 20 years I have worked, as an attorney, an administrator, and a volunteer in the criminal justice system. I have considerable experience with the nature and consequences of crime and punishment, and I cannot imagine any useful purpose to be served by Harvey's continued incarceration. . . . Every day he remains in prison is a day of absurd waste of a man whom the rest of us – family, friends, and people who have never heard of Harvey – need to have participating fully in our world.

See Letter of Clay Hiles at 2 (Ex. K.8).


#### IV. CONCLUSION

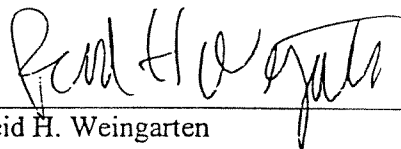
Harvey Weinig is a good and decent man who engaged in an aberrational episode of criminal activity. There is no excuse for his offenses. But he pleaded guilty, cooperated with the government, and does not deserve to be punished far more harshly than his more culpable co-defendants.

Our criminal justice system is founded upon the principle of equal treatment under the law. The disparity between Mr. Weinig's 11-year, three-month sentence and the sentences accorded his codefendants is unconscionable. This extraordinary case warrants the exercise of the President's power of commutation to reduce Mr. Weinig's sentence.

For the reasons cited above, Mr. Weinig respectfully requests that the President grant his Petition for Commutation and reduce his sentence to five years.

Respectfully submitted,

  
\_\_\_\_\_  
Harvey Weinig

  
\_\_\_\_\_  
Reid H. Weingarten  
STEPTOE & JOHNSON, LLP  
1330 Connecticut Ave., NW  
Washington, DC 20036-1795  
(202) 429-3000

*Counsel for Harvey Weinig*

Dated: <sup>April</sup>~~March~~ 6, 2000

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**STEPTOE & JOHNSON LLP**

**ATTORNEYS AT LAW**

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795

Telephone 202.429.3000  
Facsimile 202.429.3902  
www.steptoelaw.com

Reid H. Weingarten  
[REDACTED]

April 3, 2000

Mr. Roger Adams, Esq.  
Pardon Attorney  
U.S. Department of Justice  
Office of the Pardon Attorney  
500 First Street, N.W.  
Suite 400  
Washington, DC 20530

**RE: Petition for Commutation of Sentence of Harvey Weinig, Reg. No. 00100-748**

Dear Mr. Adams:

Enclosed please find Harvey Weinig's Petition for Commutation of Sentence, Memorandum in Support, and accompanying exhibits. I hope that you will find Mr. Weinig as sympathetic and deserving of commutation as I do.

Feel free to contact me if you have any questions or would like to schedule an appointment to discuss Mr. Weinig's case. I look forward to hearing from you or one of the attorneys in your office.

Very truly yours,

  
Reid H. Weingarten

Enclosures

WASHINGTON

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